

ASSEMBLY BILL

No. 2324

Introduced by Assembly Member Eggman

February 18, 2016

An act to amend Sections 47001, 47004, 47020, 47021 of, and to add Section 47005.4 to, the Food and Agricultural Code, relating to certified farmers' markets.

LEGISLATIVE COUNSEL'S DIGEST

AB 2324, as introduced, Eggman. Certified farmers' markets.

Existing law provides for the regulation of certified farmers' markets and authorizes the Secretary of Food and Agriculture to adopt regulations to encourage the direct sale by farmers to the public of all types of California agricultural products. Existing law requires vendors of agricultural products selling within a certified farmers' market to comply with specified requirements. Existing law makes it unlawful to violate the provisions regulating certified farmers' markets, and authorizes the secretary or a county agricultural commissioner, in lieu of prosecution, to levy a civil penalty against a person who violates those provisions.

This bill would specify the Legislature's intent that the secretary, in adopting those regulations and regulations clarifying the provisions regulating certified farmers' markets, endeavor to keep costs incurred by farmers and certified farmers' market operators at a minimum.

This bill would additionally require vendors of agricultural products at certified farmers' markets to keep specified sales records for at least 6 months and would require a vendor to make those records available for inspection by any state or county enforcement agency within 72 hours of delivery of the request or within a reasonable time period, as

specified. The bill would also require a certified farmers' market operator, upon written request by a state or county enforcement agency pursuant to an investigation of an alleged violation of a specified law, to note and make record of the product identity of all fresh fruits and vegetables offered for sale by a vendor, and to furnish the agency with a copy of those notes and records within 72 hours of the request or within a reasonable time period, as specified. By imposing additional requirements on vendors and operators of certified farmers' markets, the violation of which would be a crime, the bill would impose a state-mandated local program.

Existing law requires a producer to obtain a certified producer's certificate from a county agricultural commissioner before selling at a certified farmers' market and also requires the Department of Food and Agriculture to maintain a current listing of certified producers.

This bill would require a county agricultural commissioner to forward a digital copy of each certified producer's certificate issued to the department and would require the department to maintain an online, publicly accessible database listing all current certified producer certificates. By imposing additional duties on county agricultural commissioners, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 47001 of the Food and Agricultural Code
- 2 is amended to read:
- 3 47001. (a) The secretary may adopt regulations to encourage
- 4 the direct sale by farmers to the public of all types of California
- 5 agricultural products. *It is the intent of the Legislature that, in*
- 6 *adopting those regulations, the secretary shall endeavor to keep*

1 *costs incurred by farmers and certified farmers' market operators*
2 *to a minimum, recognizing that any administrative costs imposed*
3 *on farmers and certified farmers' market operators are generally*
4 *passed on in the form of increased prices to the consumer, thus*
5 *economically benefitting neither the public nor the farmer.*

6 ~~(b) These regulations may include provisions to ensure and~~
7 ~~maintain the quality and wholesomeness of the products, and to~~
8 ~~ensure that the selling activities are conducted without fraud,~~
9 ~~deception, or misrepresentation.~~

10 *(b) In accordance with the intent expressed in subdivision (a),*
11 *the secretary may adopt regulations clarifying the provisions of*
12 *this chapter, including the adoption of regulations for maintaining*
13 *the quality and wholesomeness of the products offered for sale*
14 *and promoting and fostering honest selling activities for those*
15 *products.*

16 (c) The secretary may enter into a cooperative agreement with
17 a county agricultural commissioner to carry out the provisions of
18 this chapter, including, but not limited to, administration,
19 investigations, inspections, registrations, and assistance pertaining
20 to direct marketing producers and outlets. Compensation under
21 the cooperative agreement shall be paid from assessments and fees
22 collected and deposited pursuant to this chapter and shall provide
23 reimbursement to the county agricultural commissioner for
24 associated costs exclusive of the costs of certification and minimum
25 inspections required pursuant to Section 47020.

26 (d) Upon reasonable suspicion of a violation of Section 890, a
27 certified farmers' market operator may contract with a county
28 agricultural commissioner for a special onsite field or storage
29 verification inspection of a direct marketing producer selling in a
30 certified farmers' market operated and controlled by the operator.
31 All contracts and contract fees are subject to the discretion of the
32 county agricultural commissioner in the county where the
33 verification inspections are being requested.

34 SEC. 2. Section 47004 of the Food and Agricultural Code is
35 amended to read:

36 47004. (a) Certified farmers' markets are California
37 agricultural product point-of-sale locations that are registered under
38 the provisions of Section 47020 and operated in accordance with
39 this chapter and regulations adopted pursuant to this chapter.

(b) The operator of a certified farmers' market shall establish a clearly defined marketing area where only agricultural products may be sold. Only the producer or the lawful authorized representative of the producer may sell agricultural products within the area defined as a certified farmers' market. Sales of agricultural products purchased from another individual or entity shall not occur within a certified farmers' market, and an agricultural product producer or product dealer shall not sell his or her agricultural products to another individual or entity with the understanding or knowledge that the products are intended to be resold in a certified farmers' market in violation of this chapter or the regulations adopted pursuant to this chapter. Every producer selling within a certified farmers' market shall comply with Section 47020.

(c) All vendors of agricultural products selling within a certified farmers' market shall do all of the following:

(1) Post a conspicuous sign or banner at the point of sale that states the name of the farm or ranch, the county where the farm or ranch maintains the production grounds that produced the products being offered for sale is located, and a statement that "We Grew What We Are Selling" or "We Raised What We Are Selling" or "We Grow What We Sell" or similar phrases that clearly represent that the farm or ranch is only selling agricultural products that they themselves have grown or raised on California land that they possess or control. Product sales by different farms at the same vendor stand shall separate the products from each farm or ranch and correspondingly post the required sign or banner in direct relationship with the sales display of the products produced by each farm.

(2) Ensure that all processed agricultural products that they offer for sale state in a clear manner by package label, container label, or bulk sales signage that they consist only, with the exception of incidental flavorings and necessary preservatives, of agricultural products grown or raised by the farm or ranch selling them, the farm or ranch name, and the city where the farm or ranch is located. In addition, every processed product shall identify on a package label, container label, or on bulk sales signage the registration number or other identity reference of the facility where the food was processed, or another required labeling statement or information, in accordance with Sections 110460, 114365, and 114365.2 of the Health and Safety Code, or, in the case of meat

1 or poultry products, the identity of the facility where the meat or
2 poultry products were cut and wrapped, in accordance with the
3 applicable United States Department of Agriculture or State of
4 California inspection standards, or, in the case of dairy products,
5 the identity of the facility where the dairy products were
6 manufactured or processed.

7 (3) Ensure all products being represented or offered for sale as
8 organic are clearly labeled or have conspicuous and posted
9 point-of-sale signage identifying the products as organic.

10 (4) *Keep product identity, product variety, and quantity of sales*
11 *records for all agricultural product sales made to consumers from*
12 *each certified farmers' market at which products were sold.*
13 *Records of these product sales shall be maintained by the vendor*
14 *for at least six months from the date of sale.*

15 (5) *Keep product identity and relative measured weight or*
16 *volume records of all unprocessed agricultural product delivered*
17 *to a processing facility for purposes of creating processed*
18 *agricultural product intended for sale to the public, including the*
19 *name and address of the processor, the dates when the unprocessed*
20 *product was delivered by the vendor to said processor, the dates*
21 *when the processed product was delivered to the vendor by said*
22 *processor, the character and type of processed agricultural product*
23 *produced by said processor for the vendor, and the relative*
24 *measured weight or volume of the processed product delivered*
25 *back to the vendor. These records shall be maintained by the*
26 *vendor for a minimum of six months.*

27 (d) *Upon a written request that specifically identifies the*
28 *information desired, the records required to be kept pursuant to*
29 *paragraphs (4) and (5) of subdivision (c) shall be made available*
30 *for inspection during normal business hours to any state or county*
31 *enforcement agency charged with enforcement of this chapter*
32 *within 72 hours of the delivery of the request, or within a similar*
33 *period of time that is reasonable for the circumstances prevailing*
34 *at the time.*

35 (~~d~~)

36 (e) The representations required pursuant to subdivision (c)
37 shall be subject to the provisions and penalties specified in Section
38 890.

39 (~~e~~)

1 (f) An operator of a certified farmers' market that also operates,
2 manages, or otherwise controls a separate sales activity or vending
3 event or marketing area in close proximity, adjacent, or contiguous
4 to the operator's certified farmers' market shall not allow the sale
5 or distribution of fresh whole fruits, nuts, vegetables, cultivated
6 mushrooms, herbs, and flowers by vendors selling within those
7 sales activity or vending event or marketing areas.

8 ~~(f)~~

9 (g) The operator of a certified farmers' market shall keep an
10 accurate participation record of the individual direct marketing
11 producers whose agricultural products were presented for sale in
12 their market each market day. The operators shall submit to the
13 department a quarterly report of the registration numbers and
14 participation frequency of the direct marketing producers whose
15 agricultural products were presented for sale in the operator's
16 market during that past quarter. The department shall create and
17 maintain online capability for reporting.

18 ~~(g)~~

19 (h) Operators of certified farmers' markets may establish rules
20 and procedures that are more restrictive and stringent than state
21 laws or regulations governing or implementing this chapter, so
22 long as the rules and procedures are not in conflict with state laws
23 or regulations.

24 ~~(h)~~

25 (i) Except for certified farmers' markets operated by government
26 agencies, nonprofit entities and other qualified operators of certified
27 farmers' markets shall be considered private entities and may take
28 actions, adopt rules, and impose requirements they deem necessary
29 for the proper and honest operation of their market, subject to the
30 application of any state or other laws. Government agency
31 operators of certified farmers' markets are subject to applicable
32 state laws, the regulations and laws of the governing agency, and
33 other laws governing the conduct and actions they may take as a
34 governmental entity.

35 SEC. 3. Section 47005.4 is added to the Food and Agricultural
36 Code, to read:

37 47005.4. (a) Pursuant to an investigation of an alleged violation
38 of Section 890, and upon a request by a state or county enforcement
39 agency specifying the vendor's name, farmers' market location,
40 and farmers' market date, the operator of a certified farmers'

1 market shall note and make record of the product identity of all
2 fresh fruits and vegetables that the vendor offered for sale on the
3 specified farmers' market date. The operator shall furnish to the
4 agency copies of these notes and records within 72 hours of the
5 delivery of the written request or within a similar period of time
6 that is reasonable for the circumstances prevailing at the time of
7 request.

8 (b) Nothing in this section shall be interpreted to preclude the
9 creation and keeping of additional information that a certified
10 farmers' market operator may endeavor itself to create and keep,
11 or to contractually require the provision of by a vendor as a
12 condition to selling in the operator's farmers' market.

13 SEC. 4. Section 47020 of the Food and Agricultural Code is
14 amended to read:

15 47020. (a) An operator of a certified farmers' market shall
16 annually register with the department by applying for and obtaining
17 a certificate from the county agricultural commissioner's office in
18 the county in which the certified farmers' market is located. The
19 application shall include the times and location of the *farmers'*
20 market, the name and contact information for the operator of the
21 *farmers'* market, and the agent for service of process for the
22 operator. Upon approval of an application, the county agricultural
23 commissioner shall issue to the operator a certified farmers' market
24 certificate.

25 (b) A certified farmers' market certificate issued by a county
26 agricultural commissioner shall be valid for 12 months from the
27 date of issue, and may be renewed annually thereafter. The county
28 agricultural commissioner shall inspect every certified farmers'
29 market within his or her jurisdiction at least once for every six
30 months of operation. At the time of application or renewal, the
31 county agricultural commissioner shall provide a schedule of fees
32 that reflects an estimate of expenses for inspections and may charge
33 a certification and inspection fee equal to the actual expenses
34 incurred.

35 (c) (1) (A) Before selling at a certified farmers' market, a
36 producer shall register with the department by applying for and
37 obtaining a certificate from the county agricultural commissioner's
38 office in the county in which the producer's land or facility is
39 located. The application shall include a declaration by the producer
40 that he or she is knowledgeable of and intends to produce in

1 accordance with good agricultural practices, as outlined in the
2 Small Farm Food Safety Guidelines published by the department.
3 Upon approval of an application, the county agricultural
4 commissioner shall issue to the producer a certified producer's
5 certificate.

6 (B) A declaration made pursuant to subparagraph (A) shall not
7 be used to infer that the producer is not required to comply with
8 other state or federal laws relative to food safety and good
9 agricultural practices.

10 (2) As part of obtaining or renewing a certified producer
11 certificate, a producer farming fruit, vegetables, nuts, herbs, and
12 similar crops shall annually submit to the county agricultural
13 commissioner's office in the county in which the producer's land
14 or facility is located information requested by the department about
15 the specific crops that he or she will harvest or intends to harvest
16 for sale directly to the public. The secretary may promulgate
17 regulations specifying the information a producer is required to
18 submit.

19 (3) A certified producer's certificate issued by a county
20 agricultural commissioner shall be valid for up to 12 months from
21 the date of issue and may be renewed annually thereafter. The
22 county agricultural commissioner in each county shall perform at
23 least one onsite inspection for all new certified producer's
24 certificate applicants, and may perform additional inspections as
25 needed of the property or properties listed on the certified
26 producer's certificate issued in his or her county as deemed
27 appropriate by the county agricultural commissioner to verify
28 production of the commodities being sold at a certified farmers'
29 market or the existence in storage of the producer's actual harvested
30 production, or both, of any product being sold at a certified
31 farmers' market. Where practical or purposeful, verification
32 inspections shall be made when the actual harvest or sale of the
33 commodity in question is occurring. The county agricultural
34 commissioner shall provide to the producer a schedule of fees that
35 reflects an estimate of expenses for certification or inspection at
36 the time of application or renewal or before any needed additional
37 verification inspection, and may charge a certification and
38 inspection fee equal to the actual expenses incurred.

39 (4) *A county agricultural commissioner shall forward a digital*
40 *copy of each certified producer's certificate issued to the*

1 *department, and the department shall post each certified*
2 *producer's certificate on the department's Internet Web site in a*
3 *timely manner.*

4 (d) Renewal of a certified farmers' market certificate or certified
5 producer's certificate may be denied by either the department or
6 a county agricultural commissioner if a certified farmers' market
7 or a producer is delinquent in the payment of the required state fee
8 or a county certification and inspection fee or administrative civil
9 penalty authorized pursuant to this chapter. The certificate may
10 be eligible for renewal when all outstanding balances and
11 associated penalties or administrative fines have been paid to the
12 department or the respective county or counties.

13 SEC. 5. Section 47021 of the Food and Agricultural Code is
14 amended to read:

15 47021. (a) Every operator of a certified farmers' market shall
16 remit to the department, within 30 days after the end of each
17 quarter, a fee equal to the number of vendors participating and
18 selling goods under the authority and management of the certified
19 farmers' market operator participating on each *farmers'* market
20 day for the entire previous quarter. The fee shall be two dollars
21 (\$2) for each vendor whose products were presented for sale on
22 each *farmers'* market day. A certified farmers' market operator
23 may directly recover all or part of the fee from the participating
24 vendors. An operator of a certified farmers' market located in a
25 county with a population of less than 400,000 that allows only
26 vendors of agricultural products produced by producers on land
27 located in the same county as the certified farmers' market may
28 petition the secretary for a vendor fee of one dollar (\$1). The
29 petition shall include a statement of verification of the information
30 upon which the petition is based by the county agricultural
31 commissioner in the county where the certified farmers' market
32 is located.

33 (b) An operator of a certified farmers' market who fails to pay
34 the required fee within 30 days after the end of the quarter in which
35 it is due shall pay to the department a monthly interest charge on
36 the unpaid balance and a late penalty charge, to be determined by
37 the department and not to exceed the maximum amount permitted
38 by law.

39 (c) All fees collected pursuant to this section shall be deposited
40 in the Department of Food and Agriculture Fund. The money

1 generated by the imposition of the fees shall be used, upon
2 appropriation by the Legislature, by the department to cover the
3 reasonable costs to carry out this chapter, including all of the
4 following actions undertaken by the department:

5 (1) The coordination of the Certified Farmers' Market Advisory
6 Committee or any ad hoc direct marketing advisory committee.

7 (2) The evaluation of county enforcement actions and assistance
8 with regard to multiple county enforcement problems.

9 (3) The adoption of regulations to carry out the provisions of
10 this chapter pertaining to certified farmers' markets.

11 (4) Hearings from actions taken to enforce this chapter.

12 (5) The maintenance of a current statewide listing of certified
13 farmers' markets locations.

14 (6) The maintenance of ~~a current statewide listing of producers~~
15 ~~who have been certified.~~ *an online, publicly accessible database*
16 *listing all current certified producer certificates.*

17 (7) The dissemination to all certified farmers' markets
18 information regarding the suspension or revocation of any
19 producer's certificate and the imposition of administrative
20 penalties.

21 (8) Other actions, including the maintenance of special fund
22 reserves, that are recommended by the Certified Farmers' Market
23 Advisory Committee or any ad hoc direct marketing advisory
24 committee and approved by the department for purposes of carrying
25 out this chapter pertaining to certified farmers' markets.

26 (9) Investigation and enforcement expenses, including expenses
27 incurred by any county agricultural commissioner for actions
28 conducted pursuant to this chapter.

29 SEC. 6. No reimbursement is required by this act pursuant to
30 Section 6 of Article XIII B of the California Constitution for certain
31 costs that may be incurred by a local agency or school district
32 because, in that regard, this act creates a new crime or infraction,
33 eliminates a crime or infraction, or changes the penalty for a crime
34 or infraction, within the meaning of Section 17556 of the
35 Government Code, or changes the definition of a crime within the
36 meaning of Section 6 of Article XIII B of the California
37 Constitution.

38 However, if the Commission on State Mandates determines that
39 this act contains other costs mandated by the state, reimbursement
40 to local agencies and school districts for those costs shall be made

1 pursuant to Part 7 (commencing with Section 17500) of Division
2 4 of Title 2 of the Government Code.

O